ORIGINAL

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP
3000 K STREET, NW, SUITE 300
WASHINGTON, DC 20007-5116
TELEPHONE (202)424-7500
FACSIMILE (202) 424-7645
WWW.SWIDLAW.COM

NEW YORK OFFICE
405 LEXINGTON AVENUE
NEW YORK, NY 10174
(212) 758-9500 FAX (212) 758-9526

DOCKET FILE COPY ORIGINAL

February 6, 2002

RECEIVED
FEB - 6 2002
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA COURIER

William F. Caton, Acting Secretary
Federal Communications Commission
Portals II, 445 12th Street, S.W., Ste. TW-A325
Washington, D.C. 20554

Re: **CC Docket No. 02-7; Application of Verizon New England, *et al.* for Authorization to Provide In-Region, InterLATA Services in Vermont; Comments of CTC Communications Corp.**

Dear Mr. Caton:

CTC Communications Corp., by its counsel, and pursuant to § 1.415 and 1.419 of the Commission's rules, is pleased to submit an original and four (4) copies its Comments in the above-referenced proceeding. Pursuant to the Commission's Public Notice of March 23, 2001, DA 01-734, a 3.5 inch diskette of the Comments is also enclosed. Please date-stamp the extra copy of this filing for return to us. Any questions or concerns regarding the enclosed Comments should be addressed to Mr. Kirsch at the above address.

Respectfully submitted,

Edward W. Kirsch

Eric J. Branfman
Edward W. Kirsch

Counsel for CTC Communications Corp.

Enclosure
cc: Janice Myles, Common Carrier Bureau (12 copies)
Qualex (1 copy)
Pamela Hintz, CTC

No. of Copies rec'd 0+4
List A B C D E

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Application by Verizon New England Inc.,	)	CC Docket No. 02-7
et al., for Authorization To Provide In-Region,	)	
InterLATA Services in Vermont	)	

COMMENTS OF CTC COMMUNICATIONS CORP.

Eric J. Branfman
Edward W. Kirsch
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
(202) 424-7500 (Telephone)
(202) 424-7643 (Facsimile)

Pamela L. Hintz
Vice President of Regulatory
and Legal Affairs
CTC Communications Corp
360 Second Avenue
Waltham, Massachusetts 02451
(781) 466-1242 (Telephone)
(781) 466-1306 (Facsimile)

Dated: February 6, 2002

TABLE OF CONTENTS

SUMMARY .... **iii**

I. INTRODUCTION **1**

II. COMPETITIVE CHECKLIST ITEM 1 (INTERCONNECTION) **1**

A. Verizon Has Improperly Demanded Payment of Non-Recurring Charges for Collocation Arrangements **4**

1. Pursuant to its Schedule Letters Verizon is not entitled to the second 50% of the non-recurring charges 6

2. Pursuant to its tariff, Verizon is not entitled to the second 50% of the non-recurring charges 7

3. Verizon refuses to provide documentation substantiating its claims 12

B. Verizon Has Improperly Attempted to Impose Recurring Costs for Terminated Collocation Arrangements **14**

III. COMPETITIVE CHECKLIST ITEMS 2 (NON-DISCRIMINATION), 4 (LOCAL LOOPS) AND 5 (LOCAL TRANSPORT) **16**

A. Contrary to the Plain Meaning of the Act, Verizon Does Not Provide Dark Fiber At Any Technically Feasible Point **17**

B. Verizon's Terms and Practices In Vermont Regarding Splicing of Dark Fiber, Access to Dark Fiber At Intermediate Offices, Maintenance Spares, Repair, Inventory and Responses to CLEC Inquiries For Dark Fiber Are Unreasonable and Onerous As Compared to Verizon's Practices in Massachusetts, New Hampshire, and the Practices Recently Ordered in Rhode Island, New Jersey, and the District of Columbia **19**

1. Verizon's Policies Regarding the Routing of Dark Fiber Through Intermediate Offices Are More Restrictive in Vermont Than in Massachusetts or New Hampshire and those Ordered in Rhode Island and New Jersey 20

2. Verizon Provides Access to Dark Fiber at Splice Points for CLECs in Massachusetts, and the District of Columbia, But Will Not Splice Dark Fiber for CLECs in Vermont 23

3. Verizon's Policies Regarding Reservation of Dark Fiber Result in Less Availability of Dark Fiber in Vermont Than in Massachusetts 24

TABLE OF CONTENTS (Cont'd.)

4. Verizon Fails to Take Reasonable Steps to Make Dark Fiber Available by Grooming Fibers 27

5. Except for Minor Items, Verizon Does Not Repair Dark Fiber For CLECs 28

6. Verizon's Refusal to Include in its Inventory Dark Fiber that is Not Currently Terminated at Both Ends Results in a Gross Understatement of the Amount of Dark Fiber Available to CLECs in Vermont......29

7. Verizon's Responses to CLEC Inquiry Regarding the Availability of Dark Fiber Are Deficient..........31

IV. CONCLUSION 35

SUMMARY

Verizon has failed to establish that it complies with Competitive Checklist Items 1, 2, 4, and 5 and, as a result, the Commission should either deny Verizon's Application or condition its approval upon Verizon's demonstration that it will comply with the requirements set forth in these Comments.

Checklist Item 1: Verizon has failed to provide collocation services in a just and reasonable manner. Contrary to Verizon's assertions, it is CTC's experience that Verizon's actual collocation performance and procedures do not comply with the requirements of its tariffs, the Act, and Competitive Checklist Item 1, and as a result, CTC (and possibly other CLECs as well) has been overcharged by millions of dollars.

For almost two years, Verizon has attempted to collect recurring and non-recurring charges for collocation arrangements that were terminated beginning in April 2000, despite the fact that it has not met its obligations under the agreements and tariffs that govern its collocation services. Verizon concedes that it provided neither occupancy nor access to the collocation spaces as required by its tariff, yet it attempts to rely upon informal work-progress notifications to substantiate that it is entitled to payment. More disturbing is that Verizon has continually refused to provide any documentation, or permit CTC to inspect any of the affected collocation spaces, to confirm that the work was actually performed.

This is not a simple billing dispute, as Verizon would have the Commission believe, but reflects standard policies and practices that Verizon has admitted would currently apply in Vermont today should a similar set of events arise. Verizon's overcharging of CTC, while a significant issue in itself, is symptomatic of a broader problem – the inconsistencies, uncertainties and lack of specificity between the written terms on which Verizon relies and its

actual practices, as well as the potential for unjust, unreasonable and discriminatory treatment inherent in such processes.

Verizon should not be permitted to circumvent the requirements of its tariff by reinterpreting and manipulating its collocation policy to suit its own needs. Rather, Verizon should be required to comply with the letter of its tariff and to develop and implement detailed, specific collocation procedures that mirror those requirements. In the absence of such written procedures, Verizon has the ability and the incentive to create uncertainty in a process that it controls in order to discriminate against competitors. Until this ability and incentive is eliminated or mitigated, Verizon cannot demonstrate that it complies with Checklist Item 1.

Checklist Items 2, 4, and 5: Verizon does not comply with Checklist Items 2, 4 and 5 as they relate to dark fiber. Verizon's terms, conditions and practices in Vermont regarding dark fiber are unjust and unreasonable because, as a practical matter, they provide Verizon with unlimited discretion to severely limit the quantity of dark fiber and routes that are deemed by Verizon to be available to CLECs. This is especially striking in contrast with the far more reasonable terms, conditions and practices that Verizon has implemented, or is in the process of implementing, in Massachusetts, New Hampshire, Rhode Island, New Jersey, and the District of Columbia. However, Verizon steadfastly refuses to provide CLECs operating in Vermont with the same dark fiber terms that are available in those other states. As a result of Verizon's highly restrictive policies regarding dark fiber in Vermont, dark fiber is very rarely available when a CLEC requests it.

Verizon's dark fiber offering in Vermont is non-compliant in the following respects, which results in the discriminatory practices that enable Verizon to hoard its dark fiber:

- Contrary to the unambiguous language of Section 251(c)(3), Verizon refuses to provide dark fiber at "any technically feasible point." Specifically, Verizon will not provision dark fiber transport through intermediate offices when direct routes are not available, nor provide access at existing splice points, despite the fact that it has proven technically feasible to provide access to dark fiber in other states at existing splice points and through intermediate offices without requiring the CLEC to collocate at the intermediate offices. As a result of Verizon's restrictive policies, continuous dark fiber routes are often unavailable in Vermont.
- In Vermont, Verizon refuses to open existing splice points and perform splicing in order to make dark fiber available for unbundling, even though this has proven to not only be technically feasible, but also required in other states.
- Verizon's policies in Vermont regarding maintenance spares and reservation of dark fiber severely limit the quantity of dark fiber that is characterized as available to CLECs in Vermont as compared to other states. In Vermont, Verizon reserves significantly more fibers for maintenance spares than in other states.
- Verizon discriminates against CLECs to the extent that it performs grooming to free up fibers for its own use, but refuses to do so for CLECs requesting dark fiber.
- Verizon will routinely make the needed repairs to fiber used by Verizon in order to restore transmission characteristics to a specific operating level in accordance with Verizon developed specifications. In sharp contrast, if a CLEC has requested spare dark fiber strands or has leased unbundled dark fiber strands from Verizon, Verizon refuses to make any significant repairs to the dark fiber strands, including repairs which would restore transmission characteristics to an operating level consistent with the level deemed acceptable

by Verizon for its own fiber. This places CLECs at a competitive disadvantage because degraded fiber may ultimately adversely impact the CLEC's quality of service.

- In Vermont, Verizon considers fiber that is not terminated at both ends to be "under construction" and not part of the dark fiber inventory available to CLECs, although other jurisdictions have determined that Verizon's unterminated fiber should be included in Verizon's dark fiber inventory and therefore made available to requesting CLECs. This practice results in Verizon grossly understating the amount of dark fiber in Vermont that should be characterized by Verizon as "available" as an unbundled network element. Such fiber may readily be made usable by Verizon, and should be considered usable by CLECs.
- Verizon's responses to CLEC inquiries regarding the availability of dark fiber are deficient. In contrast to the extensive information that Verizon is required to provide upon rejection of an order in other states, Verizon rejects dark fiber orders in Vermont with a terse statement that dark fiber is not available. This type of response is insufficient for a CLEC to examine the veracity of Verizon's claim that dark fiber is not available. This is especially important since some of Verizon's replies to dark fiber inquiries have in fact been found to be erroneous. Before it can be considered compliant in this area, Verizon should be obligated to identify all reasonably available alternate dark fiber routes and provide documentation to support any assertion that dark fiber is not available.

* * *

Verizon has failed to establish that it complies with many of the Competitive Checklist Items in Vermont. It's policies and practices regarding collocation and dark fiber unbundling have proved to be unjust, unreasonable, and discriminatory in many respects, and it has indicated that it has no intention of modifying them. Verizon's practices have frustrated competition and imposed considerable costs on CLECs. For the reasons discussed above, CTC respectfully requests that the Commission deny Verizon's application for Section 271 authority or condition its approval of the Application upon Verizon's demonstration that it will comply with the requirements of Competitive Checklist Items 1, 2, 4, and 5 as set forth in these Comments.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Application by Verizon New England Inc.,	)	CC Docket No. 02-7
et al., for Authorization To Provide In-Region,	)	
InterLATA Services in Vermont	)	

COMMENTS OF
CTC COMMUNICATIONS CORP.

I. INTRODUCTION

CTC Communications Corp. ("CTC") submits these Comments concerning the above-captioned Application by Verizon New England, Inc., *et al.*, (collectively, "Verizon" or "Applicants") for Provision of In-Region, InterLATA Services in Vermont filed on January 17, 2002 ("Application").[1] For the reasons stated herein, the Federal Communications Commission ("Commission") should either deny the Application or condition its approval of the Application upon Verizon's demonstration that it will comply with the requirements of Competitive Checklist Items 1, 2, 4, and 5 as set forth in these Comments.

CTC currently provides resold services in Vermont, and is certificated to provide facilities-based services in the state. It is currently deploying its network throughout Vermont.

II. COMPETITIVE CHECKLIST ITEM 1 (INTERCONNECTION)

As a condition of offering in-region interLATA services, Section 271 of the Act requires Verizon to provide, among other things, interconnection arrangements in accordance with the

[1] Application by Verizon for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of Vermont, CC Docket No. 02-7, *Public Notice* DA 02-111 (rel. Jan. 17, 2002)("Verizon Application").

requirements of Sections 251(c)(2) and 252(d)(1).[2] In exercising its authority to approve Section 271 applications, the Commission has determined that "[t]he provision of collocation is an essential prerequisite to demonstrating compliance with item 1 of the competitive checklist. To show compliance with its collocation obligations, a BOC must have processes and procedures in place to ensure that all applicable collocation arrangements are available on terms and conditions that are 'just, reasonable, and nondiscriminatory' in accordance with section 251(c)(6) and our implementing rules."[3]

Verizon may have demonstrated to the Vermont Board that it offers all of the required collocation services at Board approved rates, but in practice, it has failed to provide these services in a just and reasonable manner. Contrary to Verizon's assertions, it is CTC's experience that Verizon's actual collocation performance and procedures do not comply with the requirements of its tariffs, the Act, and Competitive Checklist Item 1. More specifically, as discussed in detail below, Verizon has billed CTC, and continues to demand payment, for numerous collocation arrangements in Vermont and other states for which Verizon is not entitled to payment under its own tariffs and other written commitments. These overcharges amount to millions of dollars. Moreover, while the collocation dispute between CTC and Verizon had its inception in events that took place more than a year ago, Verizon has testified that "the practices

[2] 47 U.S.C. § 271(c)(2)(B)(i) ("Competitive Checklist Item 1").

[3] Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York, CC Docket No. 99-295, *Memorandum Opinion and Order*, 15 FCC Rcd 3953 para. 66 (1999)(*"New York 271 Order"*).

in which Verizon engaged with respect to CTC's canceled co-location spaces reflect its present practices in Vermont should a similar set of events arise today."[4]

Verizon has attempted to frame this issue as a simple billing dispute that the Commission has previously "held" to be inappropriate for this forum.[5] However, contrary to Verizon's misleading rendition of Commission precedent, the Commission has held nothing of the sort. In both the Orders that Verizon cites, the Commission merely declined to address the issues because of its confidence in the state commission and its impression that the ILEC was either "fully cooperating"[6] or had made a "concerted effort"[7] to resolve the dispute. In CTC's case, neither is true. The issue is currently before the Commission itself in the form of an Informal Complaint filed by CTC[8] and, as the facts will show, Verizon has been anything but cooperative in resolving the dispute. And, as the Commission has observed in the past, "anecdotal evidence may be indicative of systemic failures."[9] The Commission also recognizes how billing issues can harm competition:

> First, a competitive LEC must spend additional monetary and personnel resources reconciling bills and pursuing bill corrections. Second, a competitive LEC must show

---

[4] Application of Verizon New England, Inc. for a Favorable Recommendation to Offer InterLATA Services Under 47 U.S.C. 271, Vt. P.S.B. Docket No. 6533, Transcript of Record of Technical Hearing at 44:10-14 (Nov. 30, 2001)("Tr.")(attached to Verizon Application as Appendix C, Tab 11).

[5] Verizon Application at 23 n.24.

[6] Application by Verizon New England, *et al.*, for Authorization To Provide In-Region, InterLATA Service in Massachusetts, CC Docket No. 01-9, *Memorandum Opinion and Order*, 16 FCC Rcd 8988 para. 203 (2001)("*Massachusetts 271 Order*").

[7] Application by SBC Communications, et al., Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas, CC Docket No. 00-65, *Memorandum Opinion and Order*, 15 FCC Rcd 18354 para. 203 (2000)("*Texas 271 Order*").

[8] Informal Complaint of CTC Comms. Corp., IC Number EB-02-MDIC-0001., (Jan. 9, 2002).

[9] New York 271 Order para. 50.

improper overcharges as current debts on its balance sheet until the charges are resolved, which can jeopardize its ability to attract investment capital. Third, competitive LECs must operate with a diminished capacity to monitor, predict and adjust expenses and prices in response to competition.[10]

Thus, Verizon's overcharging of CTC, while a significant issue in itself, is symptomatic of a broader problem – the inconsistencies, uncertainties and lack of specificity between the written terms on which Verizon relies and its actual practices, and the potential for unjust, unreasonable and discriminatory treatment inherent in such processes. Accordingly, Verizon's actual collocation practices today do not meet the requirements of the Act or Competitive Checklist Item 1.

A. Verizon Has Improperly Demanded Payment of Non-Recurring Charges for Collocation Arrangements

In November 1999, as part of its transition from a reseller to a facilities-based carrier, CTC submitted approximately 126 collocation applications to Verizon for physical collocation space in six states, including Massachusetts, Maine, New York, New Hampshire, Rhode Island, and Vermont. CTC submitted the collocation applications under Verizon's Tariff FCC No. 11.[11] CTC's collocation arrangements, while purchased under Verizon's FCC Tariff No. 11, are, or will be, used for multiple purposes, including special access, access to unbundled network

[10] Application of Verizon Pennsylvania Inc., *et al.,* for Authorization To Provide In-Region, InterLATA Services in Pennsylvania, CC Docket No. 01-138, *Memorandum Opinion and Order*, FCC 01-269 para. 23 (rel. Sep. 19, 2001)("*Pennsylvania 271 Order*").

[11] Verizon Telephone Companies, Tariff FCC No. 11, Access Services, §28 ("Tariff 11"). Tariff 11 is available on Verizon's website at: http://www.bell-atl.com/tariffs_info/FCC/index.htm. The collocation arrangements provided under Tariff 11, including CTC's, are included in the collocation arrangements upon which Verizon relies. Verizon Application, Appendix A, Declaration of Paul A. Lacouture and Virginia P. Ruesterholtz para. 50 ("Lacouture/Ruesterholtz Declaration").

elements ("UNEs") and local interconnection as permitted by Verizon.12 (NOTE: Verizon also confirms this practice in Volume 3, Section 4.1 of its CLEC manual where it states that "[t]specific rates, terms, and conditions of a collocation arrangement are detailed in the various tariffs on file with state commissions, the FCC, and Statements of Generally Available Terms (SGAT), as applicable.")[13]

In April 2000, CTC's Collocation Manager initiated discussions with Verizon employees to terminate many of these collocation arrangements. At that time, Verizon was unable to provide specific guidance to CTC as to how CTC could terminate its collocation arrangements.[14] CTC expected Verizon to cease work on the terminated collocation arrangements at that time and refund the unused portion of CTC's initial payment of non-recurring charges. This expectation was confirmed in discussions between CTC and Verizon personnel, and buttressed by the fact that Verizon almost a year went by without Verizon issuing any bills to the majority of the terminated arrangements. (CTC finally received the first bill in March 2001.)[15]

---

[12] Letter from Gregory M. Romano, Verizon Counsel – Interconnection, to Russell Blau, CTC Counsel (August 1, 2001)(attached hereto as Exhibit 1)("Verizon does not require a CLEC to operate two collocation arrangements, one to serve the interstate jurisdiction and one to serve the intrastate jurisdiction. Thus, CLECs utilize a single collocation arrangement to serve both jurisdictions.")

[13] Verizon CLEC Handbooks, March 2001 Release, <http://www22.verizon.com/wholesale/handbooks/section/0,,c-3-4-4_1,00.html>.

[14] *See*, Tr. at 75:5-11. In April 2000, Verizon's standard form for termination of collocation space, which Verizon has designated the "Notice of Termination/Reduction Form," was not available to CLECs. The Notice of Termination/Reduction Form was introduced on or about August 2001. Verizon provided some informal guidance to CTC regarding termination procedures in March 2001. Only recently (*i.e.*, August 20, 2001) did it introduce a Notice of Termination/Reduction Form, which provides CLECs with the necessary detailed instructions for reducing or terminating collocation arrangements or portions of such arrangements. Tr. at 87:60-11.

[15] Tr. at 75:18-23, 78:16 through 79:12.

In December 2000, in the absence of any concrete action or specific termination procedures from Verizon, CTC forwarded a spreadsheet to Verizon confirming the affected collocation arrangements and detailing the collocation arrangements CTC wished to terminate, including CTC's Winooski collocation arrangement in Vermont.[16]

From January 2001 to date, CTC and Verizon exchanged correspondence regarding termination of CTC's collocation arrangements, and have continued to discuss these matters through ongoing negotiations.[17] On multiple occasions during this time, CTC has provided Verizon detailed information about the specific collocation arrangements CTC desired to terminate.[18] Despite CTC's good faith efforts to resolve this matter, and Verizon's failure to follow the procedures outlined in both its own FCC Tariff No. 11 and written communications to CTC, not only has Verizon improperly continued to demand payment for non-recurring charges related to approximately 45 collocation arrangements that were never accepted by CTC, including the Winooski Vermont arrangement, but Verizon has also assessed late fees of approximately $5,900.00 on the disputed charges associated with the Winooski collocation arrangement.

1. **Pursuant to its Schedule Letters Verizon is not entitled to the second 50% of the non-recurring charges**

Verizon continues to attempt to impose these non-recurring charges despite Verizon's failure to follow the instruction outlined in its own Schedule Letters to CTC regarding these

[16] Tr. at 81:16-19; Application of Verizon New England, Inc. for a Favorable Recommendation to Offer InterLATA Services Under 47 U.S.C. 271, Vt. P.S.B. Docket No. 6533, Declaration of CTC Comms. Corp. para. 10 (Oct. 15, 2001)("CTC Declaration")(attached hereto as Exhibit 2)(*see also* spreadsheet exhibit CTC-10 to CTC Declaration)(attached hereto as Exhibit 2.B.).

[17] Tr. at 80:18 through 81:5, 81:20 through 82:24.

[18] Tr. at 75:4-23, 76:17-24, 80:18 through 81:19.

collocation arrangements. Specifically, in the Schedule Letters it sent to CTC shortly after receiving CTC's collocation applications, Verizon stated that the first 50% of the non-recurring charges would be due within 30 days,[19] and the remaining 50% of the non-recurring charges for these collocation arrangements "will be due upon cage completion."[20]

Contrary to the policy expressed in its Schedule Letters, Verizon has attempted to impose non-recurring charges despite the fact that no construction work was ever performed to construct collocation cages in the terminated collocation arrangements.[21] Further, some post-cage-construction work included in the non-recurring charges (e.g. affixing the ground bar to the collocation cage) could not have been completed until after the completion of construction of the collocation cage.[22]

2. <u>Pursuant to its tariff, Verizon is not entitled to the second 50% of the non-recurring charges</u>

Even if one were to disregard Verizon's failure to follow the procedures in its own Schedule Letters, Verizon's continued attempts to impose these non-recurring charges are barred

---

[19] After receiving Verizon's Schedule Letters, CTC paid the first 50% of the non-recurring charges.

[20] Application of Verizon New England, Inc. for a Favorable Recommendation to Offer InterLATA Services Under 47 U.S.C. 271, Vt. P.S.B. Docket No. 6533, Verizon Supplemental Checklist Declaration, para. 24 and Attachment C (Nov. 9, 2001)("Supplemental Checklist Declaration")(attached hereto as Exhibit 3). At the hearing and in its Declarations, Verizon attempted to distort the meaning of the unambiguous phrase "will be do upon cage completion." For example, in its Supplemental Checklist Declaration, Verizon quoted the statement from its Schedule Letter regarding payment being "due upon cage completion," but went on to state "or, put another way, due upon completion of Verizon's work on CTC's collocation arrangement." Verizon Supplemental Checklist Declaration, para. 24. Also, at the hearing, Verizon's witness again attempted to explain that what Verizon means by "upon cage completion" is completion of Verizon's work on the collocation arrangement. Tr. at 26:15 through 27:13.

[21] Tr. at 26:22-25.

[22] Tr. at 52:18 through 53:14.

by its failure to grant occupancy and provide access as described in its FCC Tariff No. 11. Section 28.3.1 of the FCC tariff provides that:

> The balance of the Space and Facility nonrecurring charges will be billed to the customer at the time [Verizon] *grants occupancy* of or 30 days from the date [that Verizon] *provides access* to the multiplexing node, cable space and/or conduit to the customer as specified in Section 28.2.3(A).[23]

In early 2001, however, Verizon billed CTC for the balance of fifty (50%) percent, of the Space and Facility non-recurring charges for all of the terminated collocation spaces, notwithstanding the fact that Verizon never granted CTC "occupancy" and never "provided access" to many of these spaces as required by Verizon's FCC Tariff No. 11. In fact, the prerequisite Collocation Acceptance Meetings ("CAM meetings") for acceptance of the space were never scheduled.[24] Further, Verizon did not provide CTC with the access cards, keys and identification necessary to obtain access to the collocation spaces.[25] Indeed, Verizon's only contemporaneous correspondence to CTC regarding the issue of acceptance or occupancy of the collocation spaces is its form CAM notification letter. Because this letter did not provide CTC "occupancy" or "access" to its collocation arrangements under FCC Tariff No. 11, it did not trigger any obligation for CTC to pay the remaining 50% of the non-recurring charges (a sum of approximately $29,088.56 for each caged collocation arrangement). Nor was any obligation for CTC to pay the remaining 50% of the non-recurring charges triggered by any other action on

[23] Tariff 11, Section 28.3.1 (emphasis added).

[24] Tr. at 29:1-8.

[25] Tr. at 29:9-20

Verizon's part. Verizon never notified CTC that the Winooski collocation arrangement had actually been completed.[26]

a. Verizon never "granted occupancy"

Sections 28.2.3(A) and 28.3.2(D) of the tariff provide that "occupancy" cannot be granted until Verizon completes its "post installation inspection to visually determine if the customer's installation of transmission equipment and facilities complies with the regulations specified in [its] tariff," and after the CLEC signs the "Design Construction Work Completion Notice." Verizon FCC Tariff No. 11, Section 28.2.3(A). Verizon admits that a post-installation inspection was never completed with respect to Winooski, nor did CTC sign a "Design Work Completion Notice."[27] Accordingly, Verizon did not grant occupancy to CTC with respect to the Winooski collocation arrangement and many others.

b. Verizon never "provided access"

Further, Verizon admits that it also never "provided access" to the Winooski collocation space. Specifically, Verizon's Ms. Maguire testified that that Verizon's central offices are secure facilities such that a CLEC must possess identification, access cards or keys issued by Verizon and meet other requirements in order to gain access to these facilities.[28] She also admitted that CTC never received such access cards, keys or other security devices with respect to Winooski.[29]

---

[26] Tr. at 25:10-16.

[27] Tr. at 29:1-8.

[28] Tr. at 29:9-15; Tariff 11, §§ 28.9.1(D)-(E) (Verizon "will issue non-employee photo identification cards for each customer employee . . . [and] provide card access to the common area where the customer's multiplexing node is located."). These security requirements are also set forth in Verizon's Collocation Guidelines, §§ 2.2 to 2.6 (June, 2000) ("Failure to wear proper ID *will* be considered cause for denial of access.").

[29] Tr. at 29:16-23.

In addition, pursuant to the tariff, "access" is not granted until "completion of the design and construction work" which Verizon concedes was never finished with respect to the disputed Vermont collocation arrangements.[30] Verizon never provided CTC with the necessary identification, access cards, and keys, nor was the construction work completed; therefore, Verizon could not have provided CTC with access to these collocation arrangements.[31]

Although Verizon concedes that it did not provide occupancy or access to the collocation spaces as required by its tariff, Verizon attempts to rely upon a form letter (the "CAM notification letter") that it sent to CTC that merely states that CTC's "collocation job is scheduled to be completed shortly."[32] Verizon concedes, however, that this form letter did not state that the collocation arrangement was actually completed or that access was then available to CTC; rather, it merely states that the collocation arrangement is "scheduled to be completed shortly."[33] Indeed, Verizon admitted that its work was not completed on CTC's Winooski collocation space on April 27, 2000 when Verizon sent CTC the CAM notification letter[34] and, in fact, the construction work was not completed until May 12, 2000.[35] In sharp contrast,

---

[30] *See, e.g.* Tr. at 29:1-89.

[31] Tr. at 29:16-23.

[32] Tr. at 29:16-23, 32:16 through 33:6, 56:19 through 57:3; Verizon Supplemental Checklist Declaration para. 27; Lacouture/Ruesterholtz Declaration para. 70.

[33] Tr. at 31:1-21; Verizon Supplemental Checklist Declaration para. 27.

[34] Tr. at 24:6-9; Verizon Supplemental Checklist Declaration para. 29; Lacouture/Ruesterholtz Declaration para. 70.

[35] Tr. at 23:11-15; Verizon Supplemental Checklist Declaration para. 28; Lacouture/Ruesterholtz Declaration para. 70. Verizon's witness noted that actual completion of construction typically occurs sometime before or after the date provided in the Schedule Letter and the CAM notification letter. Tr. at 31:22 through 32:2. Ms. McGuire also stated that Verizon does not provide any notice of actual completion. Tr. at 25:10-16. Thus, at best, the CAM notification letter provides only an estimate of the completion date and should not be the basis for triggering the remaining 50% of non-recurring charges and the monthly recurring charges.

Verizon's FCC Tariff No. 11 mandates that Verizon provide written notice of "the completion of the design and construction work" and requires that the CLEC sign the "Design and Construction Work Completion Notice" "indicating acceptance of the design and construction work" before the CLEC may begin installation work and "prior to" occupancy.[36] Verizon never provided any such oral or written notice that work had actually been completed at the Winooski collocation site.[37] As demonstrated above, pursuant to the tariff, completion of the work is one of the prerequisites to providing access and granting occupancy. Because Verizon never completed the construction work, never provided the required written notice, and never provided CTC with occupancy or access to its collocation arrangements in accordance with Verizon's tariff, either through its form CAM notification letter or any other notice, CTC's obligation to pay the remaining 50% of the non-recurring charges was never triggered.

In addition, Verizon's witness conceded that Verizon's Schedule Letter, CAM notification letters, and actual practice are not consistent with respect to completion of collocation arrangements. For instance, Verizon's witness conceded that the Schedule Letter includes only an estimated date for completion of a collocation arrangement[38] and that the CAM notification letter does not even mention a specific date.[39] Verizon's witness also admitted that in most cases, Verizon completes a collocation arrangement either before or after the estimated date provided in the Schedule Letter.[40] Finally, Verizon's witness conceded that it is not Verizon's practice to provide an oral or written notice of the date that a collocation arrangement

---

[36] Tariff 11 §§ 28.2.4(G) and 28.3.2(D).

[37] Tr. at 25:10-16.

[38] Tr. at 31:13-21.

[39] Tr. at 31:1-12.

is actually complete; rather, Verizon relies upon the imprecise forecast set forth in the initial Schedule Letter.[41] Thus, given the discrepancies between Verizon's tariffs, its Schedule Letters and its actual practice, CLECs, especially those new to collocation, have no way to know what procedures they or Verizon should follow with respect to collocation. At a minimum, if no CAM meeting takes place, Verizon should be required to provide written notice to CLECs that their collocation space is actually complete and state specifically the date on which Verizon claims the remaining 50% of the non-recurring charges is due and the monthly recurring charges begin to accrue. Without clear, specific procedures and processes governing Verizon's provision of collocation, Verizon cannot demonstrate that it has complied with Checklist Item 1.

3. <u>Verizon refuses to provide documentation substantiating its claims.</u>

While Verizon claims that it completed nearly all of the work on the affected collocation arrangements,[42] it has refused to provide any documentation or permit CTC to inspect any of the affected collocation spaces to confirm that the work was actually performed. Indeed, Verizon's witness acknowledged that Verizon has refused CTC's request to provide such evidence because it believed the issue to be moot.[43] Verizon appears to imply that CTC should be estopped from disputing these charges because CTC waited too long to terminate the arrangements.[44] However, as explained above, CTC had no reason to believe that these arrangements had *not* been terminated.[45] Consequently, since CTC believed that construction on the collocation sites had

[40] Tr. at 31:22 through 32:4.

[41] *See, e.g.*, Tr. at 23:22 through 24:10, 24:21 through 25:1, 25:10-16.

[42] Verizon Supplemental Checklist Declaration paras. 26, 28; Lacouture/Ruesterholtz Declaration para. 70.

[43] *See, e.g.*, Tr. at 36:14-24.

[44] Lacouture/Ruesterholtz Declaration para. 71.

[45] *See*, Tr. at 75:24 through 76:9.

stopped, there would be no reason for CTC to assume that it would need to inspect completed construction work. In fact, as soon as CTC became aware that Verizon believed it had completed construction (*i.e.*, when CTC received the first bill for the remaining construction charges in March 2001), CTC requested written documentation of the construction work.[46] According to Verizon, it is not clear whether this documentation even exists![47] Moreover, while Verizon claims the alleged improvements to the Winooski central office is still in place,[48] Verizon has testified that it would refuse to allow CTC or any third party to verify what improvements had actually been made to the Winooski collocation space.[49] In other words, Verizon continues to claim that CTC is responsible for certain non-recurring and recurring charges in connection with the terminated collocation space, despite the fact that Verizon is unwilling or unable to provide any documentation or other evidence to demonstrate that the work actually took place. Even assuming that Verizon complied with its own procedures for providing access or granting occupancy to collocation space, which Verizon has not demonstrated in CTC's case, Verizon cannot demonstrate that it actually performed the work for which it claims payment.

Further, Verizon admits that some of the construction work, such as affixing the grounding bar to the cage, was never completed by Verizon. Finally, Verizon also admitted that a Collocation MOP form is used by Verizon to document completion of its collocation

[46] Tr. at 76:1-16.

[47] Tr. at 35:21 through 36:13.

[48] Tr. at 40: 9-17.

[49] Tr. at 40:18-21.

construction work, and that no Collocation MOP form was prepared with respect to CTC's disputed Vermont collocation arrangement.[50]

Moreover, while this disagreement over non-recurring charges is a present controversy regarding charges accessed for work allegedly performed last year, Verizon has offered no evidence that over the intervening period its policy regarding collocation charges has changed one iota. In fact, Verizon's witness stated that Verizon's process has not changed since CTC's collocation issues arose, nor has Verizon clarified its tariffs, its Schedule Letter, its CAM notification letters or its collocation process.[51] Verizon's attempt to impose non-recurring charges for work that it cannot – and will not -- demonstrate that it performed is an unjust and unreasonable practice and violates Checklist Item 1.

B. Verizon Has Improperly Attempted to Impose Recurring Costs for Terminated Collocation Arrangements

Verizon's tariff also provides that a CLEC is not obligated to pay the recurring costs for a collocation arrangement until the "occupancy date or 30 days from the date [Verizon] provides access" to the collocation arrangement.[52] As demonstrated above, Verizon never granted occupancy or provided access to CTC to the disputed collocation arrangements, nor did Verizon complete the construction work relating to these collocation arrangements and provide written notice of its completion. In sum, Verizon failed to follow the procedures imposed by its own tariff that are necessary preconditions to CTC's liability for recurring charges. Accordingly, CTC has no obligation to pay the recurring charges for the disputed collocation arrangements.

[50] Tr. at 29:1-8.

[51] Tr. at 44:10-14.

[52] Tariff 11 § 28.9.8(B).

Nonetheless, Verizon claims that billing for CTC's White River Junction, Vermont collocation should have commenced in May 2000,[53] after Verizon sent a CAM notification letter to CTC, despite the fact that Verizon asserts that CTC did not actually accept the collocation space until February 2001.[54] Verizon's claim is refuted by its own witness's testimony. Verizon's witness conceded that, to the extent the exceptions noted on the collocation MOP form for White River Junction, which Verizon received in February 2001, prevent CTC from using the collocation space, billing for recurring charges at the White River Junction site should not have commenced until after Verizon corrected those exceptions.[55]

* * *

Under Verizon's current policy, which is not supported by or consistent with its tariff, a CLEC is obligated to pay Verizon the remaining non-recurring charges, as well as all monthly recurring charges, when Verizon sends a CAM notification letter, regardless of when or even whether the CLEC actually accepts the space.[56] This is true even if Verizon never informs the CLEC that the space is actually ready or that the CLEC can have access at any particular time, as opposed to some unspecified future time. On the other hand, Verizon's tariff provides that a CLEC is not obligated to pay the recurring costs for a collocation arrangement until the

---

[53] Tr. at 65:12-25; Verizon Supplemental Checklist Declaration paras. 28, 33.

[54] Verizon Supplemental Checklist Declaration para.18; Tr. at 65:12-25; Lacouture/Ruesterholtz Declaration para. 72. CTC does not concede that it ever accepted the White River Junction collocation site. Tr. at 89:17. Specifically, CTC asserts that the evidence seems to suggest that the collocation MOP form for that location was not signed by an authorized employee of CTC. Tr. at 89:1-2. Nonetheless, even assuming the acceptance is valid, the earliest that Verizon should be permitted to begin assessing the monthly recurring charges, and to seek payment of the remaining 50% of the non-recurring charges, is February 2001.

[55] Tr. at 28:5-19.

[56] Tr. at 56:19 through 57:3, 57:23 through 58:1.

"occupancy date or 30 days from the date [Verizon] provides access" to the collocation arrangement.[57] CTC has demonstrated that Verizon did not provide access or grant occupancy to the collocation arrangements at issue. Verizon should not be permitted to circumvent the requirements of its tariff by reinterpreting and manipulating its collocation policy to suit its own needs. Rather, Verizon should be required to comply with the letter of its tariff and to develop and implement detailed, specific collocation procedures that mirror those requirements. In the absence of such written procedures, Verizon has the ability and the incentive to create uncertainty in a process that it controls in order to discriminate against competitors. Until this ability and incentive is eliminated or mitigated, Verizon cannot demonstrate that it is in compliance with Checklist Item 1.

III. COMPETITIVE CHECKLIST ITEMS 2 (NON-DISCRIMINATION), 4 (LOCAL LOOPS) AND 5 (LOCAL TRANSPORT)

Section 271 of the Act requires an RBOC seeking in-region interLATA authority to offer "nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)."[58] Section 251(c)(3), in turn, requires incumbent LECs "to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis *at any technically feasible point* on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."[59]

---

[57] Tariff 11 § 28.9.8(B).

[58] 47 U.S.C. § 271(c)(2)(B)(ii) ("Competitive Checklist Item 2").

[59] 47 U.S.C. § 251(c)(3) (emphasis added).